

The respondent files this application for review before the Appeals Board requesting review of the Preliminary Hearing Order entered by Administrative Law Judge James R. Ward, dated March 4, 1994, raising the following issues:

- (1) Compensability.
- (2) Claimant's entitlement to temporary total disability benefits.
- (3) Claimant's entitlement to psychiatric medical care.
- (4) Whether the claimant's condition arose out of and in the course of her employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for purposes of preliminary hearing, the Appeals Board finds as follows:

The preliminary hearing, which is the subject of this appeal, is one of six (6) preliminary hearings that have been held in this case. The respondent made a request for this preliminary hearing indicating on the Form E-3, Application for Preliminary Hearing, that the issue to be addressed was medical treatment. The attorney for the respondent, during his preliminary remarks before the claimant testified, expanded his request from termination of medical treatment to termination of all previous preliminary orders as the claimant had reached maximum medical improvement. A request was also made for a regular hearing to be held on the issue of nature and extent of claimant's permanent disability in order to conclude this case. As a result of the preliminary hearing, the Administrative Law Judge issued an Order dated March 4, 1994, granting respondent's request to terminate chiropractic care and denying respondent's request to terminate temporary total disability, medical care and vocational rehabilitation benefits.

The first of the six preliminary hearings was held, in the present case, on December 4, 1991, with the claimant requesting change in treating physicians. The claimant claimed that she suffered bilateral carpal tunnel syndrome by a series of accidents while working for the respondent from November 1, 1990 through November 30, 1990. She further claimed a back injury from a series of accidents from April 8, 1991 through July 17, 1991. The respondent admitted, for purposes of the preliminary hearing, the bilateral carpal tunnel injury but denied the alleged back injury. The Administrative Law Judge ordered medical treatment to be provided for both the claimant's bilateral carpal tunnel and back injuries. On June 12, 1992, the claimant requested psychiatric medical treatment to be provided by Gilbert Parks, M.D., a psychiatrist located in Topeka, Kansas, because of emotional problems. The Administrative Law Judge, in an Order dated September 11, 1992, granted such request for psychiatric medical treatment.

Since this is a Preliminary Hearing Order that has been challenged, the Appeals Board first has to determine whether there is a jurisdictional basis to review the Order. The respondent in its Application for Review and during oral argument before the Appeals Board, raises both the issue of compensability and whether the claimant's condition arose out of and in the course of her employment. It was clarified in the preliminary hearing transcript and during oral argument of this appeal, that the term "condition" contained in the respondent's issue as to whether the claimant's condition arose out of and in the course of her employment, refers to the claimant's emotional or psychiatric condition. The

Appeals Board finds that the separate issue of compensability is the same issue as the issue as to whether claimant's alleged emotional condition arose out of and in the course of her employment and should be joined as one issue for purposes of this appeal.

K.S.A. 44-534a(a)(2) authorizes the Appeals Board to review a preliminary order if a party challenges the issue as to whether or not the claimant's accidental injury arose out of and in the course of her employment with the respondent. In the case at hand, the specific issue that is presented is whether the claimant's emotional condition arose out of and in the course of her employment and not whether the claimant suffered an accidental injury. During the first preliminary hearing that was held in this matter on December 4, 1991, the Administrative Law Judge was confronted with the question as to whether the claimant's alleged accidental injuries to both of her upper extremities and to her back arose out of and in the course of her employment. The Administrative Law Judge as a result of this hearing ordered medical treatment for both injuries and thus found the injuries to be work related.

The actual challenge that the respondent presents in this appeal is a finding relating to the consequences of the underlying physical injuries, not whether the claimant's accidental injuries arose out of and in the course of her employment with respondent. The Appeals Board finds that this issue relates more to the issue of nature and extent of claimant's injury. The psychiatric problems do not have to result from the work performed but do have to be directly connected or traceable to the physical injury. See Love v. McDonald's Restaurant, 13 Kan. App. 2d 397, 771 P.2d 557 (1989). The Appeals Board, therefore, finds respondent's appeal does not, when properly described, challenge a finding that the claimant suffered an accidental injury arising out of and in the course of her employment. The Appeals Board, therefore, does not have jurisdiction to review this Preliminary Order on the basis of the issue of whether the claimant's emotional condition arose out of and in the course of her employment with the respondent.

The other two issues challenged by the respondent relate to claimant's entitlement to temporary total disability benefits and psychiatric medical care. These are issues that the Administrative Law Judge has authority to decide pursuant to K.S.A. 44-534a(a)(2) and are not listed among those issues specifically enumerated in K.S.A. 44-534a as jurisdictional. Accordingly, the Appeals Board does not have jurisdiction to review this Preliminary Hearing Order in reference to these issues.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order entered by Administrative Law Judge James R. Ward on March 4, 1994, terminating chiropractic care and denying respondent's request to terminate temporary total disability, medical and vocational rehabilitation benefits is affirmed in all respects and remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of September, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

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